REMARKS

Reconsideration and allowance in view of the foregoing amendment and the following remarks are respectfully requested. Claims 1, 14, 27, 36 and 46 are amended without prejudice or disclaimer.

Rejection of Claims 1-4, 6-7, 9-17, 19-20, 22-30, 33-39, 41-48 and 50-53 Under 35 U.S.C. §103(a)

The Office Action rejects claims 1-4, 6-7, 9-17, 19-20, 22-30, 33-39, 41-48 and 50-53 under 35 U.S.C. §103(a) as being unpatentable over Goetz et al. (U.S. Patent No. 5,928,330) ("Goetz et al.") in view of Ritchie et al. (U.S. Patent No. 6,295,530) ("Ritchie et al."). Applicants traverse this rejection and submit that one of skill in the art would not have sufficient motivation or suggestion to combine these references and that even if combined they fail to teach each limitation of the claims. Applicants, although traverse this rejection, have also made a minor amendment to the claims to highlight a feature that distinguishes them from the prior art.

To establish a *prima facie* case of obviousness, the Examiner must meet three criteria. First, there must be some motivation or suggestion, either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art, to combine the references. Second, there must be a reasonable expectation of success, and finally, the prior art references must teach or suggest all the claim limitations. The Examiner bears the initial burden of providing some suggestion of the desirability of doing what the inventor has done. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." MPEP 2142.

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not

sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). MPEP 2143.01.

Furthermore, if the examiner determines there is factual support for rejecting the claimed invention under 35 U.S.C. 103, the examiner must then consider any evidence supporting the patentability of the claimed invention, such as any evidence in the specification or any other evidence submitted by the applicant. The ultimate determination of patentability is based on the entire record, by a preponderance of evidence, with due consideration to the persuasiveness of any arguments and any secondary evidence. *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). The legal standard of "a preponderance of evidence" requires the evidence to be more convincing than the evidence which is offered in opposition to it. With regard to rejections under 35 U.S.C. 103, the examiner must provide evidence which as a whole shows that the legal determination sought to be proved (i.e., the reference teachings establish a *prima facie* case of obviousness) is more probable than not. MPEP 2142.

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art, and all teachings in the prior art must be considered to the extent that they are in analogous arts. Where the teachings of two or more prior art references conflict, the examiner must weigh the power of each reference to suggest solutions to one of ordinary skill in the art, considering the degree to which one reference might accurately discredit another. *In re Young*, 927 F.2d 588, 18 USPQ2d 1089 (Fed. Cir. 1991). MPEP 2143.01.

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

With these principles in mind, Applicants respectfully submit that one of skill in the art would not have sufficient motivation or suggestion to combine these references and furthermore

as shall be seen, Applicants shall explain why the fundamental foundation for the Examiner's
obviousness analysis is unsupportable in the actual teachings of the prior art.

We first note that the Office Action asserts on page 3 that "Ritchie is in a same field of
network based environment" and that thus, the Office Action appears to assert that Ritchie et al.
is analogous to Goetz et al. Applicants traverse this analysis and note that these two references
actually are quite different while generally referring to a network based environment. For
example, Ritchie et al. focus on generating output signals from a serving device to a plurality of
browsing devices connected to a network. The output signal is organized in such a way that it
includes commands executable by each browser so as to display viewable data in accordance
with specified page formatting. When a user requests information from a browsing client, it
includes information related to the data itself and a display format for the data. The focus and
teachings of Ritchie et al. is to process the data so as to combine a representation of viewable
data with executable instructions which are then supplied to the requesting browsing device after
being effectively assembled as a real time on-line process. See Abstract.

In contrast, Goetz et al. focus on utilizing units of multimedia information wherein each
unit has an importance value assigned to it that is related to the quality of the presentation. The
invention of Goetz et al. is a method for characterizing the performance capabilities of the
system by gathering statistics and performing analysis with a streaming operation and then as
well as inferring network conditions from the characterized performance. A server then streams
units of multimedia information to the client at a streaming rate and adapts the streaming rate in
response to the importance of the information and in response to the inferred network conditions.

Applicants simply note that just as our previous response analyzed the Wang
Laboratories case which both were in the same field of SIMM memory, the Court concluded that
they were not analogous and prevented their combination inasmuch as they were focused quite

different directions. Similarly, Applicants respectfully submit that merely because Ritchie et al. and Goetz et al. are in the same broad field of a network-based environment, their teachings are quite diverse and focus on such different aspects of the network and transmitting data that one of skill in the art would be unlikely to combine these references.

Furthermore, the Office Action concludes on pages 3 and 4 that it would be obvious to one of skill in the art at the time of the invention to modify Goetz et al.'s system with Ritchie et al.'s teachings of requesting and/or suggesting the quality of display of presentation data at the receiver when "it is of concern from the user." Applicants shall show that some of the analysis in the Office Action that mentions on user requests is clearly erroneous, thus completely eroding the foundation of the Office Action's obviousness analysis. Notably, on page 3 of the Office Action, when analyzing the teachings of the Goetz et al. reference, the Office Action states that "the client or the user can change or alter the characteristics of data to be sent to him/her by suggesting or requesting some parameter suggestions….". (Emphasis added) The Office Action cites column 11, lines 27-48 of Goetz et al. as providing the teaching that the user can change or alter the characteristics of data. However, in this portion of the reference, Goetz et al. merely teach "in step 1120, the multimedia client application 1020 sends a message to the multimedia server application 1040 specifying a desired rate of transmission. The desired rate of transmission maybe determined by the client, for example, by determining the communication rate of an attached communication device such as a modem (more below)." There is simply no reference in this portion of Goetz et al. that "the user" can change or alter characteristics of data being sent by him or her. Accordingly, the Office Action is incorrect in characterizing the teachings of Goetz et al. as broad enough to incorporate a teaching that the user can make such a suggestion. Furthermore, the Office Action on page 3 teaches that "the formulated suggestion or user request for quality presentations can be obtained by sending the requests to the server, and

the server sends the requested data to the user terminal." Here, the Office Action cites column 3, lines 1-35, Figures 10 and 11, column 10, line 64 to column 12, line 13, which are supposed to teach details on procedures for the client how to request quality presentations being displayed on the client's device from the server. Applicants again note that a careful review of each of these cited portions of Goetz et al. disclose that the analysis or information on the performance capabilities of the system are for inferring network conditions are taught as being performed automatically and not based on "a user request" for quality presentations. Therefore, the several references to user requests for quality presentations or users being able to change or alter the characteristics of data as being part of the teachings of Goetz et al. is erroneous.

Applicants also submit that similar erroneous suggestions with regards to Ritchie et al. are also in the Office Action. For example, the Office Action on page 3 asserts that Ritchie et al. teaches that the quality of display at the receiver of the viewer can be enhanced or improved and the suggestion is "collected from application and the user" (emphasis added), citing column 2, lines 15-30 and column 3, lines 9-35, for enhancing the visual quality of the display to user based on "user/viewer's request". Applicants traverse this characterization of the teachings of Ritchie et al. and note that neither of these portions of Ritchie et al. teach suggestions from the user regarding enhancing the visual quality of display. Column 2 teaches about a known way of improving the quality of images derived from text-based systems by adding formatting commands or instructions to data strings. The instructions control operations of a receiver such that the signals are processed to ensure that the transmitted signals are processed in such a way as to generate a high quality video images that are capable of being displayed at a requesting clients terminal.

Here, what is taught in Ritchie et al. is simply that a client terminal requests data or images and the system transmits those in such a way as to generate a high quality video image at

the client. There is no suggestion that there is a particular user preference or user suggestion about enhancing visual quality for display. This user interaction is simply a generic user request for data as is common in any internet interaction. The same can be said for the teachings in column 3, lines 9-35, in which the general operation of the user browsing through files to request data is taught. The teaching in column 3 relates to a browser being able to improve the quality of the displayed image such that the user is presented with a high quality video image if the suitable equipment is available. However, there is no suggestion in column 3 that the "suggestion is collected from the user" regarding the quality of the display. Therefore, Applicants traverse this characterization of the teachings of the reference.

Furthermore, the Office Action on page 3 teaches that "the system controller oversees the adjustment and/or changes of parameters based on the user's system performance and/or user preference changes." (emphasis added) Again, Applicants traverse this characterization and note that what is taught in Ritchie et al. is the basic user interaction with a browser in which data is requested. The various portions cited from Ritchie et al. as supporting the Examiner's characterization of the teachings, column 5, columns 9 and 10, columns 11-12 and columns 19-20 do not teach user preference changes. Accordingly, Applicants respectfully submit that the numerous references to user changes or user requests associated with the quality of data are erroneously applied to the teachings of the prior art and then used as the fundamental reason that it would be obvious for one of ordinary skill in the art to combine these references. However, Applicants respectfully submit that the teachings of both these references merely reflect typical user browser interaction rather than the particular user interaction or user suggestions as is characterized in the Office Action. When an objective analysis of the teachings of these two references would be applied, then the purpose articulated by the Office Action why one of skill in the art would find it obvious to combine these references simply falls apart. Accordingly,

Applicants submit that these references should not be combined and that the preponderance of the evidence is against such combination.

Applicants make a special note that the characterizations of the teachings above are not provided in relationship to what Applicants claim as their invention. The characterization of what is taught or not taught by the references is made for the purpose of traversing the analysis that it would be obvious for one of skill in the art to combine these references and not any of the statements above should be applied to what Applicants consider the invention to be.

Next, Applicants have made a minor amendment to the claims in order to clarify the claims and not to introduce limitations to overcome the prior art. Claim 1 recites a computer readable medium storing instructions for controlling a processor to display, at a receiver, received data, and then analyze, by the receiver, parameters associated with the quality of the displayed data and formulate, by the receiver and based on the analysis, a media-parameter suggestion for an encoder to alter the characteristics of data to be sent to the receiver. Applicants note that this minor amendment to claim 1 clarifies that it is the receiver that performs the analysis of parameters associated with the quality of the displayed data after the data is displayed at the receiver. Applicants submit that even if these Ritchie et al. were combined with Goetz et al. that they would fail to teach this limitation. The Office Action correctly asserts that Goetz et al. fail to teach the limitation of analyzing by the receiver parameters associated with the quality of the displayed data. Applicants traverse the Office Action's assertion that Ritchie et al. provide this teaching. Column 2, lines 15-30, teach that signals that are provided in data that is transmitted are executed by a receiver's terminal in such as way that it is compatible with the receiving system. Column 3, teaches how a browser improves the quality of displayed image data by ensuring the compatibility is received between the local system facilities and the transmitted data and that hypertext links may be defined within the document that are executed

by the browser so as to make additional documents available in response to the user's selections of data. Ritchie et al. focus on how to process a request for data in the first instance "so as to display viewable data in accordance with the specified page format." Column 5, lines 6-7. In other words, each of the portions cited in the Office Action of Ritchie et al. focus on in the first instance processing data to combine the representation of the viewable data with executable instructions and then supplying the output signals to the requesting browsing device derived from the processed data. Column 5, lines 11-15. In other words, in the first instance the data is processed and transmitted at the receiver, already having the data and the executable. This differs from claim 1 which recites first displaying, at a receiver, the received data and then analyzing by the receiver, parameters associated with the quality of the already displayed data and then formulating, by the receiver and based on the analysis, a media parameter suggestion for an encoder to alter the characteristics of data to be sent to the receiver. The suggestion is not generated by the user and the analysis by the receiver is performed after a display of received data. There are several features in claim 1 which distinguish the invention from the combined teachings of Goetz et al. and Ritchie et al. even if it were appropriate to combine these references (which Applicants traverse). Accordingly, Applicants respectfully submit that for several reasons claim 1 is patentable and in condition for allowance.

The Office Action on page 4 asserts that Goetz et al. discloses receiving a user preference to be used in the analysis of step (b). This analysis on page 4 seems to be cut off from the Office Action in which the Examiner in this Office Action says "user preferences are used for opening presentations at the user terminal based on the earlier" and then there is nothing further. Accordingly, based on the analysis above, Applicants traverse the assertion that Goetz et al. teach the user's suggestions and user preferences other than the generic user interaction in the browser where content is requested. Applicants submit that claim 2 is patentable and if a

rejection is maintained for claim 2, Applicants respectfully requests a complete analysis given the information set forth above and given the apparent inconclusive sentence with respect to the rejection of this claim.

Claims 3, 4, 6, 7, 9-13 each depend from claim 1 and recite further limitations therefrom. Accordingly, Applicants respectfully submit that these claims are patentable and in condition for allowance. Claim 14 recites a method transmitting data from a sender to a receiver across a network. Similar amendments to claim 1 have been made to claim 14. Applicants respectfully submit that claim 14 is patentable for the same reasons set forth above relative to claim 1.

Claims 16-17, 19-20 and 22-26 each depend from claim 14 and recite further limitations therefrom. Therefore, Applicants submit that these claims are patentable. Claim 27 recites a method for transmitting data across a network. The second limitation is amended to recite receiving from the receiver a suggestion to alter further transmitted data on the basis of a quality of data transmitted to the receiver, wherein the suggestion is generated by the receiver based on a receiver analysis of data quality at the receiver. Further clarification of the suggestion is made in claim 27 to easily distinguish it from the combination of Goetz et al. and Ritchie et al. and based on the discussion set forth above. Accordingly, Applicants submit that for the reasons set forth herein, that claim 27 and dependent claims 28-30 and 33-35 are patentable and in condition for allowance. Claim 36 has a similar minor amendment to that made above to claim 1. Applicants submit that claim 36 is patentable for the same reasons set forth relative to claim 1 and that dependent claims 37-39 and 41-45 are patentable and in condition for allowance. Claim 46 is amended in a similar manner to claim 27 discussed above. Therefore, Applicants submit that claim 46 and dependent claims 47, 48 and 50-53 are patentable and in condition for allowance.

Rejection of Claims 5 and 18 Under 35 U.S.C. §103(a)

The Office Action rejects claims 5 and 18 under 35 U.S.C. §103(a) as being unpatentable over Goetz et al. in view of Ritchie et al. and Pocock (U.S. Patent No. 5,014,125) ("Pocock"). Applicants traverse this rejection and submit that these claims are patentable.

Claim 5 depends from claim 1 and recites further limitations therefrom and is therefore patentable.

Claim 18 depends from claim 14 and recites further limitations therefrom and is therefore patentable and in condition for allowance.

Applicants also note that on the Office Action on page 8 asserts that it would be obvious to one of skill in the art to modify Goetz et al. and "Shaw's system" with well-known and must-have features of a PC such as a CPU, a graphics card and texture-mapping engine as one of Pocock's in order to perform particular activities or analyze the quality of displayed data as noted. Applicants are unsure what the Shaw reference is but would assume that the Office Action meant to refer to Ritchie et al. and will proceed on that basis. Clarification is requested.

Applicants note that Pocock et al. is certainly not in the same sort of endeavor as Ritchie et al. or Goetz et al. Pocock et al. teaches a television system that employs a telephone connection and a two-way manner to send command signals from a view to a central controller to select various presentations from a central controller. As can be seen in the picture of Pocock et al. which reflects Figure 1, we see the television 36, the user terminal 14 and the telephone network 12 that is provided as a separate interactive mechanism for the television system. Applicants submit that this is clearly an entirely different operation from the client based systems of Ritchie et al. and Goetz et al. In fact, there are expressed teachings away from the combination of these references. Ritchie et al. introduce their invention in columns 1 and 2 as discussing cable television systems which are usually based on standard broadcast television

signals. Column 1, lines 19-21. The discussion of cable television systems and the opportunity

of providing some two-way capabilities which allows a user to provide in home shopping

facilities is also discussed starting in column 2, line 1. However, Ritchie et al. expressly

distances his invention from such approaches by stating in column 2, line 3,

> "thus, the use of systems of this type must be distinguished from simply local database
> system in which all operations of the systems are locally controlled and no account
> whatsoever needs to be taken of remote facilities and characteristics. Such systems are
> significantly different in that the database systems only transfer data that is subsequently
> manipulated by controlling programs. In mark-up languages the formatting commands
> are embedded in the form of executable commands, executable at the receiving station, so
> as to perform operations upon the viewable data supported by the local platform and
> peripherals."

Applicants respectfully submit that one of skill in the art would certainly recognize that

Ritchie et al. introduce the approach of cable television systems and some of the two-way

capabilities of such cable television systems, but then requires that this type of system "must be

distinguished from simple local database systems" and then uses language that is very similar to

the language of their invention in which formatting commands are embedded in the form of

executable commands in the data which are executable at a receiving station. See column 5,

lines 1-15. Accordingly, Applicants respectfully submit that these references are non-analogous,

not in the same field of endeavor and also include some express teachings which distance Ritchie

et al. from Pocock et al.

Furthermore, Applicants respectfully submit that certainly one of skill in the art would

not look to the teachings of Pocock et al. for the purpose of combining such basic features of a

computer as a CPU and a graphics card which clearly would be already known to one of skill in

the art and already essentially included in the teachings of Ritchie et al. and/or Goetz et al. in

their discussion of a basic network and basic hardware functionality. Therefore, Applicants

respectfully submit that it is certainly unconvincing that one of skill in the art being aware of

Ritchie et al. and Goetz et al. would somehow look to Pocock et al. for the purpose of

incorporating for some reason previously unmentioned but complete inherent hardware such as a

CPU or a graphics card. Accordingly, for these several reasons, Applicants respectfully submit

that claims 5 and 18 are patentable and in condition for allowance.

Rejection of Claims 8, 21, 31, 40 and 49 Under 35 U.S.C. §103(a)

The Office Action rejects claims 8, 21, 31, 40 and 49 under 35 U.S.C. §103(a) as being

unpatentable over Goetz et al. in view of Ritchie et al. and Volk et al. (U.S. Patent No.

5,673,401) ("Volk et al."). Applicants respectfully submit that claims 8, 21, 31 40 and 49 each

depend from allowable claims and recite further limitations therefrom. Accordingly, Applicants

submit that these claims are patentable and in condition for allowance.
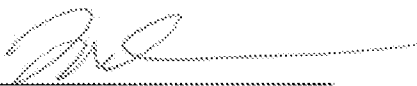
Applicants submit that one of skill in the art would not have sufficient motivation or

suggestion to combine these references. Applicants note that Volk et al. teach an object-oriented

system for generating and displaying control items that allow users of an interactive network to

recognize and select control functions via a graphical user interface. Applicants note that

certainly the user interaction focus in Volk et al. would not necessarily be obvious to combine

with, for example, Goetz et al. which focuses on the mechanism by which network conditions

may be inferred in the way data is streamed in units of multimedia information to the client at

particular rates, wherein that rate is adapted. In other words, Applicants submit that the

preponderance of the evidence would be against such a combination wherein the focus of Volk et

al. is completely different from the focus of Goetz et al. Accordingly, for this additional reason,

Applicants submit that Volk et al. should not be combined with Goetz et al. and for the reasons

set forth above, Applicants submit that it clear by a preponderance of the evidence it is against

Ritchie et al. being combined with Goetz et al. Accordingly, these claims are patentable for

these additional reasons.

CONCLUSION

Having addressed all rejections and objections, Applicants respectfully submit that the subject application is in condition for allowance and a Notice to that effect is earnestly solicited. If necessary, the Commissioner for Patents is authorized to charge or credit the **Law Office of Thomas M. Isaacson, LLC, Account No. 50-2960** for any deficiency or overpayment.

Respectfully submitted,

Date: June 19, 2007   By: _____

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